

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: ██████████

BOARD DATE: 8 May 2024

DOCKET NUMBER: AR20230012127

APPLICANT REQUESTS: her Reentry Eligibility (RE) code be changed to enable her to join the military as a Reserve officer.

APPLICANT'S SUPPORTING DOCUMENT CONSIDERED BY THE BOARD:

DD Form 149 (Application for Correction of Military Record)

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code, Section 1552(b); however, the Army Board for Correction of Military Records (ABCMR) conducted a substantive review of this case and determined it is in the interest of justice to excuse the applicant's failure to timely file.
2. The applicant states her disability has improved significantly since her discharge from the Army and she wants to join the Air Force as Reserve officer and serve her country again. She has gone to physical therapy through the Department of Veterans Affairs (VA) and is able to manage her knee injury much better now. She spent a lot of time strengthening her body and ensuring that she is not prone to injuries.
3. On 3 September 2019, the applicant enlisted in the Regular Army for a period of 3 years and 31 weeks. Upon completion of initial entry training, she was assigned to a unit at Joint Base Lewis-McChord, WA.
4. A DA Form 199 (Informal Physical Evaluation Board (PEB) Proceedings) shows an informal PEB convened on 1 September 2021 to evaluate the applicant's medical condition. Her condition was determined to be left patellofemoral chondrosis and insertional iliotibial band tendinitis. She was found to be physically unfit because her functional activity limitations associated with this condition made her unable to reasonably perform required duties. A permanent disposition was recommended. The PEB found her physically unfit and recommended a combined disability rating of 10 percent. The PEB further recommended that she be separated from service with severance pay. The applicant was notified of the PEB results and advised of her options on 3 September 2021. On 8 September 2021, the applicant concurred with the findings

and recommendations of the informal PEB and waived a formal hearing in her case. She also declined the opportunity for reconsideration of her VA disability ratings.

5. Orders and the applicant's DD Form 214 (Certificate of Release or Discharge from Active Duty) show she was honorably discharged on 8 December 2021, under the provisions of Army Regulation 635-40 (Physical Evaluation for Retention, Retirement, or Separation), paragraph 4-27c(3) by reason of "Disability, Severance Pay, Non-Combat Related" with Separation Program Designator (SPD) code "JEB" and RE code "4." She was credited with completion of 2 years, 3 months, and 6 days of net active service this period.

6. In reaching its determination, the Board can consider the applicant's petition, arguments and assertions, and service record.

7. MEDICAL REVIEW:

a. The Army Review Boards Agency (ARBA) Medical Advisor was asked to review this case. Documentation reviewed included the applicant's ABCMR application and accompanying documentation, the military electronic medical record (AHLTA), the VA electronic medical record (JLV), the electronic Physical Evaluation Board (ePEB), the Medical Electronic Data Care History and Readiness Tracking (MEDCHART) application, and the Interactive Personnel Electronic Records Management System (iPERMS). The ARBA Medical Advisor made the following findings and recommendations:

b. The applicant is applying to the ABCMR requesting a change in her reentry code. She states:

"I would like to get my reenlistment code changed. My disability is improving, and I want to join the military as a reserve officer ... My injury has improved significantly since my discharge from the Army. I've been going to physical therapy through the VA and I am able to manage my knee injury a lot better now. I've spent a lot of time strengthening my body and ensuring that I am not prone to injuries. I really would love to serve this country once again, in the reserve component."

c. The Record of Proceedings details the applicant's military service and the circumstances of the case. Her DD 214 shows she entered the regular Army on 3 September 2019 and received \$14,698.80 of disability severance pay on 8 December 2021 under provisions provided in paragraph 4-27c(3) of AR 635-40, Physical Evaluation for Retention, Retirement, or Separation (19 January 2017). Her reentry code was 4 indicates the applicant was separated from her last period of service with a nonwaiverable disqualification.

d. No medical documentation was submitted with the application. The applicant's Informal Physical Evaluation Board (PEB) Proceedings (DA Form 199) shows the PEB found her "Left patellofemoral chondrosis and insertional iliotibial band tendonitis" unfitting for continued military service on 1 September 2021. They applied the VA derived rating of 10% and recommended the applicant be separated with disability severance pay. On 8 September 2021, after being counseled on the Board's findings and recommendation by her PEB liaison officer, she concurred with the PEB, waived her right to a formal hearing, and declined the opportunity for the VA to review her disability rating.

e. Paragraph 4-23a of AR 601-210, Regular Army and Reserve Components Enlistment Program (31 August 2016) states: "The following are nonwaiverable separations and/or discharges: a. Physically disqualified."

f. It is the opinion of the ARBA medical advisor that a change in her reentry code is unwarranted.

#### BOARD DISCUSSION:

After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not warranted. The Board carefully considered the applicant's record of service, documents submitted in support of the petition and executed a comprehensive and standard review based on law, policy and regulation. Upon review of the applicant's petition, available military records and the medical review, the Board concurred with the advising official finding the applicant's request for a change in her reentry code is unwarranted. The opine noted the applicant was separated from her last period of service with a nonwaiverable disqualification. The Board found insufficient evidence of in-service mitigating factors that would warrant a change to the applicant's Re-Code. As such, the Board determined based on the medical opine the applicant's records lacks evidence to support her reentry eligibility (RE) code being changed to enable her to join the military as a reserve officer. Therefore, the Board denied relief.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
█	█	█	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The evidence presented does not demonstrate the existence of a probable error or injustice. Therefore, the Board determined the overall merits of this case are insufficient as a basis for correction of the records of the individual concerned.



I certify that herein is recorded the true and complete record of the proceedings of the Army Board for Correction of Military Records in this case.

REFERENCES:

1. Title 10, U.S. Code, Section 1552(b), provides that applications for correction of military records must be filed within three years after discovery of the alleged error or injustice. This provision of law also allows the ABCMR to excuse an applicant's failure to timely file within the three-year statute of limitations if the ABCMR determines it would be in the interest of justice to do so.
2. Title 10, USC, Section 1556, provides the Secretary of the Army shall ensure that an applicant seeking corrective action by ARBA is provided a copy of all correspondence and communications, including summaries of verbal communications, with any agencies or persons external to agency or board, or a member of the staff of the agency or

Board, that directly pertains to or has material effect on the applicant's case, except as authorized by statute.

3. Army Regulation 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The regulation provides that the ABCMR begins its consideration of each case with the presumption of administrative regularity. The applicant has the burden of proving an error or injustice by a preponderance of the evidence. It is not an investigative body.

4. Title 10, U.S. Code, Chapter 61, Retirement or Separation for Physical Disability, provides for the medical retirement and for the discharge for physical unfitness, with severance pay, of soldiers who incur a physical disability in the line of duty while serving on active or inactive duty. However, the disability must have been the proximate result of performing military duty.

5. Army Regulation 635-40 provides that the medical treatment facility commander with the primary care responsibility will evaluate those referred to him and will, if it appears as though the member is not medically qualified to perform duty or fails to meet retention criteria, refer the member to a medical evaluation board. Those members who do not meet medical retention standards will be referred to a PEB for a determination of whether they are able to perform the duties of their grade and military specialty with the medically disqualifying condition.

6. Army Regulation 635-5-1 (SPD Codes) implements the specific authorities and reasons for separating Soldiers from active duty. It also prescribes when to enter SPD codes on the DD Form 214.

a. Paragraph 2-1 provides that SPD codes are three-character alphabetic combinations that identify reasons for, and types of, separation from active duty. The primary purpose of SPD codes is to provide statistical accounting of reasons for separation. They are intended exclusively for the internal use of Department of Defense and the Military Services to assist in the collection and analysis of separation data. This analysis may, in turn, influence changes in separation policy. SPD codes are not intended to stigmatize an individual in any manner.

b. Table 2-3 provides the SPDs and narrative reasons for separation that are applicable to enlisted personnel. It shows, in part, SPD JEB is the appropriate code to assign to an enlisted Soldier who is involuntarily separated under the provisions of Army Regulation 635-40, due to disability, severance pay, non-combat related. Additionally, the SPD/RE Code Cross Reference Table established RE code "4" as the proper reentry code to assign to Soldiers separated under this authority and for this reason.

7. Army Regulation 601-210 (Regular Army and Reserve Components Enlistment Program) covers eligibility criteria, policies, and procedures for enlistment and processing into the Regular Army, U.S. Army Reserve, and Army National Guard. Table 3-1 provides a list of RE codes.

- RE code "1" applies to Soldiers completing their term of active service, who are considered qualified for enlistment if all other criteria are met
- RE code "2" is no longer in use but applied to Soldiers separated for the convenience of the government, when reenlistment is not contemplated, who are fully qualified for enlistment/reenlistment
- RE code "3" applies to Soldiers who are not considered fully qualified for reentry or continuous service at time of separation, whose disqualification is waivable – they are ineligible unless a waiver is granted
- RE code "4" applies to Soldiers separated from last period of service with a non-waivable disqualification

//NOTHING FOLLOWS//